

# **BANKING (SPECIAL PROVISIONS) ACT 2008**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON CLAUSES AND SCHEDULES**

#### ***Introduction***

#### ***Section 1: Meaning of “authorised UK deposit-taker”***

10. This section defines the institutions whose securities or property, rights and liabilities may be transferred under the Act. Any UK undertaking which is authorised by the Financial Services Authority to accept deposits (principally banks and building societies<sup>1</sup>) is an authorised UK deposit-taker for the purposes of the Act. There is an exception for any undertaking, such as a broker, that is authorised to accept deposits only for the purposes of another activity. Deposit-takers which are not incorporated in, or formed under, UK law are not authorised UK deposit-takers for the purposes of the Act. The prudential supervision of those deposit-takers is a matter for their home state regulators and not for the UK authorities.

#### ***Section 2: Cases where Treasury’s powers are exercisable***

11. This section defines the circumstances in which, and the purposes for which, the Treasury may exercise its powers to make an order under section 3 or 6 to transfer securities or property, rights and liabilities of an authorised deposit-taker.
12. The Treasury may exercise these powers in relation to a deposit-taker only where it appears to the Treasury to be desirable for either or both of the purposes set out in subsection (2). The purposes are:
- a) maintaining the stability of the UK financial system where the Treasury consider that there would be a serious threat to its stability if the power were not exercised;
  - b) protecting the public interest in circumstances where financial assistance has been provided by the Treasury to the deposit-taker for the purpose of maintaining the stability of the UK financial system.
13. “Financial assistance”, in subsection (2)(b), includes-
- a) any case where the Bank of England has provided financial assistance to a deposit-taker and the Treasury have assumed a liability in respect of that assistance, the liability is of a kind of which the Treasury are expected to notify the House of Commons or the Public Accounts Committee or Treasury Select Committee of that House, and the Treasury have given notice of that liability (subsection (3) (a)). This only includes financial assistance provided by the Bank of England in respect of which the Treasury have incurred a liability, actual or contingent, and have notified the House of Commons that it has incurred that liability. It does not therefore include the Bank of England’s open market operations, nor does it include other forms of liquidity support made available on the basis of

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<sup>1</sup> It also includes credit unions, but in practice it is extremely improbable that the purposes for exercise of the transfer powers set out in section 2 would ever be relevant to a credit union.

*These notes refer to the Banking (Special Provisions) Act 2008  
(c.2) which received Royal Assent on 21st February 2008*

the Bank of England's own balance sheet, without the need for the Bank to seek an indemnity from the Treasury. So subsection (3)(a) would be engaged only in circumstances where public support was being provided to a specific institution in order to maintain the stability of the UK financial system, and where that support was significant enough to require the Bank of England to seek support from the Treasury, and the Treasury were expected to notify it; and

- b) any case where the Chancellor of the Exchequer has announced that the Treasury (whether acting alone or with the Bank of England) would if necessary put in place depositor guarantee arrangements in relation to a particular deposit-taker (as well as any case where any such arrangements have been put in place, whether or not following such an announcement) (subsection (3)(b)).
14. Subsections (4) to (6) and (11) make further provision about the giving of notice, and the meaning of the guarantee arrangements referred to in subsection (3).
  15. Where an order has been made under section 3 or 6, a second or subsequent order may be made in relation to the same body whether or not one of the conditions in section 2 is met (subsection (7)). This is to ensure that subsequent orders relating to a particular institution can deal with any necessary ancillary matters, even where the circumstances giving rise to the initial order have been substantially addressed by that order.
  16. The powers in sections 3 and 6 to transfer securities or property, rights and liabilities of a deposit-taker may only be exercised for a period of one year from Royal Assent, although this does not affect the continuation in force of any order made during this period (subsections (8) and (9)). Nor does it affect the powers in section 8.